SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION
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May 6, 2010

Application Summary
(For Commission consideration on May 20, 2010)

Number:	BCDC Application No. 3-09
Date Filed:	May 6, 2010
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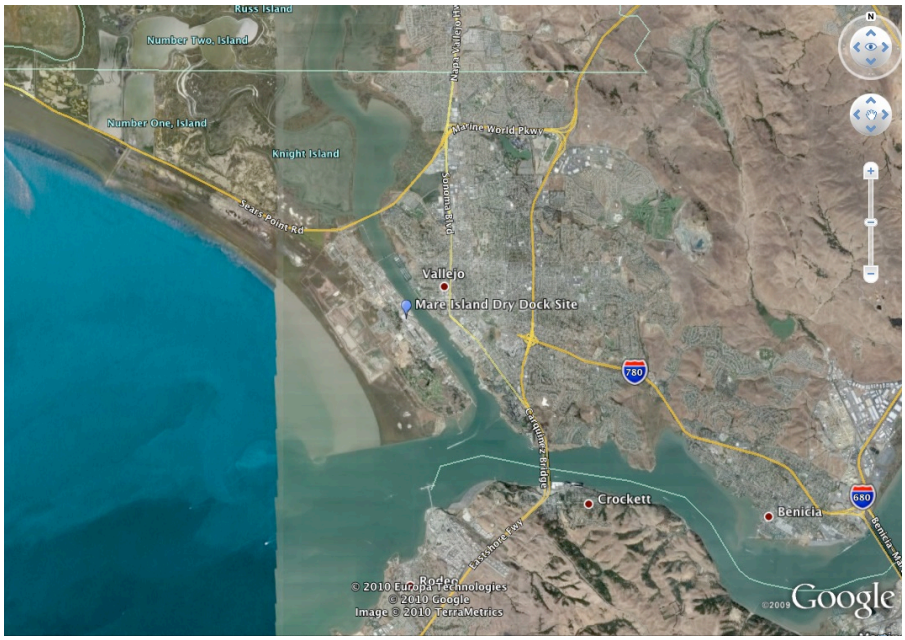
Staff Assigned:	Karen Weiss (415-352-3669, karenw@bcdc.ca.gov)

Summary

Applicants: Allied Defense Recycling and Lennar Mare Island

Location: The proposed project is located on an approximately 16.6 acre site, between Rickover Street, 9th Street and Bagley Street on Mare Island, in the City of Vallejo, Solano County, and would involve work in the Bay and within the shoreline band. The project site is bordered to the west by existing industrial buildings, to the north by Drydock One, to the south by an existing crate operating business, and to the east by the Napa River/ Mare Island Strait. The project area is also located within the boundaries of the Mare Island Historic District (Exhibit A).



Making San Francisco Bay Better

Project: The proposed project involves establishing a full-service marine-related facility to provide maintenance, repair, and dismantling of ships. The facility would utilize Drydocks Two and Three (formerly part of the Mare Island Naval Shipyard) and adjacent areas, berths and infrastructure. The proposed activities would include: (1) maintenance dredging of approximately 610,000 cubic yards of sediment over ten years in Mare Island Strait and in front of Drydock Two and Three (Exhibit C); (2) removing four existing buildings and creating an approximately 120-space parking lot as part of preparing to reopen the site; (3) installing an approximately 22,700-square-foot area for an off-site public access overlook between Nimitz Avenue and Waterfront Avenue (Exhibit D); and (4) operating Drydock Two and Three, including nearby facilities to maintain and dismantle ships. Along with ship repair, a primary goal of the proposed project is to win contracts to dismantle several of the nearby Mothball Fleet vessels.

Based on consultation with the California Department of Fish and Game (CDFG) and the U.S. Fish and Wildlife Service (USFWS), the proposed dredging and operational activities could result in the incidental take of both State and Federal threatened and endangered fish species. There are four state listed species under the California Endangered Species Act and five under the federal Endangered Species Act. To mitigate for the potential impacts associated with the dredging and operation of the project site, the proposed project also proposes to remove a fish migration barrier and restore a Chinook salmon spawning stream bed in the Napa River watershed and acquire, enhance and permanently preserve approximately 5 acres of tidal shallow water habitat.

Issues Raised: The staff believes that the application raises three primary issues: (1) whether the project would provide maximum feasible public access consistent with the project; (2) whether the project is consistent with the Commission's natural resource policies, including policies regarding fish, other aquatic organisms and wildlife; and (3) whether the project is consistent with the Commission's dredging and water quality policies.

Background

Drydocks Two and Three are located near the mouth of the Napa River on Mare Island, in the City of Vallejo. The dry docks are located within the Mare Island Historic District and were a part of a former U.S. Naval Base from 1854 to 1996. The Mare Island Naval Shipyards built, maintained, overhauled and refueled ships. Most of the Shipyard pre-dated the Commission's jurisdiction.

In 1996, as part of the 1993 Base Realignment and Closure (BRAC) process, the U.S. Navy closed the Mare Island Shipyards, and in cooperation with the California Department of Toxic Substances and Control (DTSC), the Navy began cleaning up several hazardous waste cleanup sites on Mare Island in order to prepare the site to transfer to the City of Vallejo. Since the base was closed, the existing dry docks and associated onsite infrastructure have been inoperative. In 1997, the Commission issued a Consistency Determination (CN 10-97) authorizing the transfer of the facility from the U.S. Navy to the City of Vallejo. At that time, the Commission reviewed the City of Vallejo's Mare Island Specific Plan and generally determined it to be in conformance with the Commission's laws and policies. At present, Lennar Mare Island, LLC (LMI) owns a 670-acre portion of Mare Island. Once the cleanup and development is complete, LMI plans to transfer the ownership back to the City of Vallejo. The U.S. Navy still owns the submerged lands within the Mare Island Straits. The Navy has stated that once the applicants obtain a BCDC permit for the proposed work, they will issue a lease for the submerged lands.

Project Description

Project Details: The applicants, Allied Defense Recycling and Lennar Mare Island, describe the project as follows:

In the Bay:

Within the Mare Island Straits

(a) Conduct maintenance dredging to remove up to 610,000 cubic yards (cy) of sediment over a ten year period (200,000 cy for Episode 1 and 2 and up to 410,000 cy in subsequent years) from the areas in front of dry docks 2, 3 and 4 to a depth of minus 32 feet mean lower low water (MLLW), berths 11, 12, 13 and 14 to a depth of minus 30 feet MLLW, berths 15 and 16 to minus 26 feet MLLW, and for each area up to two feet over dredge allowance: Sixty-six percent of the material would be disposed at the Carquinez Strait (SF-9) disposal site and an estimated 33% of the dredged material (or approximately 66,000 cy from Episodes 1 and 2) would be taken to the Hamilton Restoration site, or disposed of at the San Francisco Ocean Disposal Site (SF-DODS), the Montezuma Wetland Project site, or an upland site outside of the Commission's jurisdiction.

Within the shoreline band:

(a) Restore, operate and maintain in-kind Drydock Two and Three covering an approximately 152,000 square foot (3.49 acres) area;

(b) Use approximately 11 of the 23 existing on-site buildings and two pumphouses for office space and shipyard storage totaling approximately 18,580 square feet (0.43 acres);

(c) Install, use and maintain an approximately 120-space parking lot, four moveable cranes, four moveable storage boxes for scrap material to be hauled off-site for reuse, and one temporary office trailer for two years; and

(d) Install a public access overlook with an approximately 42-inch-high guardrail, two benches, lighting, a trash can, and a six-foot-high chain link fence to the northwest and northeast of the overlook site.

Fill: This project does not propose any fill in the Bay.

Public Access: Since the U.S. Navy transferred Mare Island to the City of Vallejo and Lennar Mare Island, the Community Reuse plan has focused on cleaning up the contaminated portions of the island and opening up portions of the island that have not been publicly accessible before.

Due to the industrial nature of the proposed site, there is no current or proposed on-site public access. The applicants have proposed providing waterfront access at a 22,700 square-foot site approximately ¼ of a mile northwest of the project site. The proposed public access would include: public access signs directing the public from the nearest public road to the waterfront, railings, fences, two benches, and one trash container. A storage building would be removed to open up sight lines and provide a more open access area. The area northwest of the proposed public access area is a part of the DTSC base cleanup and the area northeast of the project site contains old cranes and rail lines. According to the applicants, both sites are unsafe for public access. Therefore, an approximately 6-foot-high chain link fence would be located along both sides of the proposed public access area. In the future, the fence to the northwest would be removed, connecting the proposed overlook to a potential future Bay Trail segment along Waterfront Avenue (Exhibit D). No new public access parking is proposed for the project, but informal public parking is located nearby.

Type of Public Access	Square Feet	Acres	Shoreline Length (feet)	Amount (US$)	Yes/ No
On-Site (new)					
Off-Site (new)	22,700	0.5	50		
Protected or Maintained					
Monetary Contribution					
View Corridor					
Total	22,700	0.5	50		

Priority Use: The proposed project is not located within a priority use area.

Schedule and Cost: Allied Defense Recycling and Lennar Mare Island propose to begin the project by August 1, 2010 and complete the first two maintenance dredge episodes by October 15, 2012. The project includes annual maintenance dredging and monthly biological monitoring of endangered and threatened species during the operation of the two Drydock facilities. The applicants estimate that the total project cost would be approximately $1,200,000.

Staff Analysis

A. **Issues Raised**: The staff believes the application raises three primary issues: (1) whether the project would provide the maximum feasible public access consistent with the project; (2) whether the project is consistent with the Commission's natural resource policies, including fish, other aquatic organisms and wildlife; and (3) whether the project is consistent with the Commission's dredging and water quality policies.

1. **Maximum Feasible Amount of Public Access.** Section 66602 of the McAteer-Petris Act states that "…existing public access to the shoreline and waters of the…[Bay] is inadequate and that maximum feasible public access, consistent with a proposed project, should be provided." The Bay Plan Public Access Policy 2 states, in part: "…maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline, whether it be for housing, industry, port, airport, public facility, wildlife area, or other use, except in cases where public access would be clearly inconsistent with the project because of public safety considerations or significant use conflicts, including unavoidable, significant adverse effects on Bay natural resources. In these cases, in lieu access at another location preferably near the project should be provided." The Bay Plan Public Access Policy 5 states, in part: "[w]henever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed." The Bay Plan Public Access Policy 6 states, in part: "Public access improvements provided as a condition of any approval should be consistent with the project and the physical environment…and provide for the public's safety and convenience. The improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should permit barrier free access for the physically handicapped to the maximum feasible extent, include an ongoing maintenance program, and should be identified with appropriate signs." The Bay Plan Public Access Policy 8 also states, part: "[a]ccess to and along the waterfront should be provided by walkways, trails, or other appropriate means to connect the nearest public thoroughfare where convenient parking or public transportation may be available." The Bay Plan Public Access Policy 10 states, "[f]ederal, state, regional and local jurisdictions, special districts, and the Commission should cooperate to provide appropriately sited, designed and managed public access, especially to link the entire series of shoreline parks, regional trail systems (such as the San Francisco Bay Trail) and existing public access areas to the extent feasible." In assessing whether a project provides maximum feasible public access consistent with the project, the Commission relies on the McAteer-Petris Act, the policies of the San Francisco Bay Plan, and also relevant court decisions.

   Currently, there is no public access at or near the site. Due to public safety concerns arising from the industrial nature of the site, the applicants state that on-site public access would be inconsistent with the project purpose. After consulting with staff, the applicants are proposing to provide an off-site public access overlook approximately ¼ of a mile from the project site. The proposed public access overlook would

provide public access from Nimitz Street down to Waterfront Avenue. Located adjacent to the old ferry access, cranes and rail lines to the east, and Waterfront Avenue to the west, the new overlook would provide views of the Napa River and the Vallejo Ferry Terminal along an approximately 180-foot-long section of the waterfront. The applicants are proposing a new 42-inch-high guardrail along the waterfront, two benches, public access signs from the nearest road and a trash receptacle. These public access improvements would be completed approximately one year from the commencement of operations at the dry dock to provide time to relocate and remove the existing building and to design and build the proposed railing.

Northwest of the public access area, the applicants are working with Department of Toxic Substances and Control (DTSC) to cleanup various areas that were contaminated when the U.S. Navy operated Mare Island. According to the applicants, once the clean up is completed, the proposed overlook would connect to a public access promenade down the entire stretch of Waterfront Avenue. In the mean time, the applicants are proposing a fence west of the overlook. Because of old rail lines and cranes east of the overlook, the applicants feel that this area is unsafe for the public, therefore they are proposing a fence from the shoreline toward Nimitz Avenue to block access until they can create a safer environment for the public.

The applicants state that this is one of many public access areas to be created in the future as outlined in the Mare Island Specific Plan.

Overall, the applicants state that the approximately 22,700-square-foot (0.53 acre) public access area would provide a unique public access area now, and once the cleanup is completed by DTSC and LMI begins to develop the area, it would become a part of a great public open space, including Waterfront Avenue, the Mare Island Historic Museum, and the historic Drydock No. One.

The Commission should determine whether the proposed project would provide the maximum feasible public access consistent with the project and the best mechanism to ensure that the public access is constructed in a timely manner.

2. **Natural Resources Policies**

b. **Fish, Other Aquatic Organisms and Wildlife.** Policy 2 of the Bay Plan policies on Fish, Other Aquatic Organisms and Wildlife states that, "species threatened or endangered, species that the California Department of Fish and Game has determined are candidates for listing as endangered or threatened under the California Endangered Species Act, or any species that provides substantial public benefits, should be protected, whether in the Bay or behind dikes." Policy 4 states that, "The Commission should: (a) Consult with the California Department of Fish and Game and the U.S. Fish and Wildlife Service or the National Marine Fisheries Service whenever a proposed project may adversely affect an endangered or threatened plant, fish, other aquatic organism or wildlife species, (b) Not authorize projects that would result in the "taking" of any plant, fish, other aquatic organism or wildlife species listed as endangered or threatened pursuant to the state or federal endangered species acts, or the federal Marine Mammal Protection Act, or species that are candidates for listing under the California Endangered Species Act, unless the project applicants have obtained the appropriate "take" authorization from the U.S. Fish and Wildlife Service, National Marine Fisheries Service or the California Department of Fish and Game; and (c) Give appropriate consideration to the recommendations of the California Department of Fish and Game, the National Marine Fisheries Service

or the United States Fish and Wildlife Service in order to avoid possible adverse effects of a proposed project on fish, other aquatic organisms and wildlife habitat."

Because of the work proposed in the water, the California Department of Fish and Game (CDFG), the U.S. Fish and Wildlife Service (USFWS) and the National Oceanic and Atmospheric Association National Marine Fisheries Service (NOAA Fisheries) were consulted. Initially all three agencies expressed concern over the potential impacts of both the dredging and operations of the project on threatened or endangered fish species. The concerns were based on the potential of entraining and taking of the endangered Delta Smelt (state and federally listed), Winter-run Chinook salmon (state and federally listed), the threatened Longfin smelt (state and federally listed), Spring-run Chinook salmon (state and federally listed), the central coast steelhead (federally listed), and the southern distinct population segment (DPS) of green sturgeon (federally listed). The concern arises from the possibility that fish fry (juvenile fish) may be sucked up by a hydraulic dredge, or entrained in the water filling the dry docks.

In order to avoid or minimize impacts to the delta smelt and Chinook salmon during dredging, the Incidental Take Permit (ITP) issued by the California Department of Fish and Game and signed by the applicants on April 23, 2010, limits the applicants to using a clamshell bucket or mechanical dredge during an environmental work window from August 1 to October 15th. The ITP also limits the applicants to dredge only during daylight hours and to dredge only two dredging cycles over a 3-year period.

During operations, the ITP requires the applicants to designate a representative (Designated Representative) and a biologist (Designated Biologist) to communicate with CDFG and to monitor the impact of the dredging and dry dock operations on the listed species.

Under the ITP, the Designated Biologist would be responsible for: (1) immediately stopping all on-site activities that are not in compliance with the ITP; (2) conducting an education program for all employees regarding the listed species; (3) being present on-site during all drydock operations to minimize the take of a listed species and to maintain compliance with all mitigation and avoidance measures; and (4) preserving and immediately calling the CDFG if a listed species is found dead within the project boundary.

The applicants must also notify CDFG fourteen days before commencing any dredging and all dry dock operations. The ITP also requires the applicants to keep the project site clean, properly dispose of all construction refuse, and immediately stop/repair and clean up any fuel or hazardous waste leaks or spills. In order to comply with all reporting conditions, the applicants must provide monthly compliance reports and annual status reports.

Other provisions of the ITP include limiting dry dock operations to: (1) not exceed 16 evolutions of the docks per year and limit the dry docks to 12 million gallons of water; (2) minimize the dewatering operation of the dry docks from January to May to reduce entrainment of delta and longfin smelt larvae and Chinook salmon juveniles; and (3) submit a Fish Monitoring Plan and Fish Rescue Plan, outlining the procedure for rescuing all fish prior to fully dewatering the dry docks, including the release of all listed species first.

Though implementation of these conditions will minimize impacts to fish species, it is unlikely that impacts to fish can be completely avoided. To mitigate for the unavoidable project impacts, particularly for Chinook salmon, the ITP requires that the applicants remove or provide for the removal of a fish migra-

tion barrier and restore a streambed on a Chinook salmon spawning stream in the Napa River Watershed prior to initiating in-water project activities. The CDFG listed a footpath near the Calistoga Community Center as a potential mitigation site. To mitigate for unavoidable impacts to the Delta and longfin smelt, the ITP requires that the applicants acquire, restore, enhance and permanently preserve 5 acres of tidal shallow water habitat prior to initiating in-water project activities.

While the U.S. Fish and Wildlife Service (USFWS) and NOAA have not yet released their Biological Opinions, USFWS has stated that the mitigation measures and activities listed in the Biological Opinion would most likely be similar to those listed in the Department of Fish and Game's ITP.

The Commission should determine whether the project is consistent with its laws and policies regarding Fish, Other Aquatic Organisms, and Wildlife.

3. **Dredging and Water Quality.** Bay Plan Policy 1 on dredging states in part, that "[d]redging and dredged material disposal should be conducted in an environmentally and economically sound manner. Dredgers should reduce disposal in the Bay and certain waterways over time…" According to Dredging Policy 2, the Commission should authorize dredging when it can find that (a) it serves a water-oriented use or other important public purpose; (b) the materials to be dredged meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board; (c) important fisheries and Bay natural resources would be protected through seasonal restrictions; (d) the project will result in the minimum dredging volume necessary; and (e) the materials would be disposed of in accordance with Policy 3." Dredging Policy 3 states in part, that "dredged materials should, if feasible, be reused or disposed outside the Bay and certain waterways. Except when reused in an approved fill project, dredged material should not be disposed in the Bay…."

   In addition to the Bay Plan dredging policies regarding water quality and provisions of Section 66605 of the McAteer-Petris Act of potential impacts of fill on water quality, the Bay Plan Water Quality Policy 2 states that "[W]ater quality in all parts of the Bay should be maintained at a level that will support and promote the beneficial uses of the Bay as identified in the San Francisco Bay Regional Water Quality Control Board's Basin Plan and should be protected from all harmful or potentially harmful pollutants. The policies, recommendations, decisions, advice, and authority of the State Water Resources Control Board and the Regional Board, should be the basis for carrying out the Commission's water quality responsibilities."

   a. **Need for Dredging.** To be able to bring ships to the existing dry docks and adjoining berths for repair or dismantling, the applicants have stated that they need to dredge accumulated sediments between the dry docks and the navigable channel of Mare Island Strait. Due to the high siltation rate in Mare Island Straits, the applicants have proposed a ten-year maintenance-dredging program intended to maintain necessary navigation and berthing depths. The proposed ten-year maintenance-dredging project includes dredging up to 610,000 cubic yards (cy) over the ten-year period (105,000 for the first episode, and up to a maximum of 200,000 cy for the first two subsequent episodes) to a project depth of -26 to -32 feet MLLW, plus a two-foot over-dredge allowance.

   b. **Water Oriented Use.** The proposed project involves maintenance dredging, and the disposal of dredged sediments in the Bay and beneficial reuse at authorized upland locations to ensure safe navigation at the shipyard, a water-oriented use, as defined in Section 66605 of the McAteer-Petris Act. Section 66663 of the

McAteer-Petris Act further states that "…because of the shallowness and high rate of sedimentation of the San Francisco Bay, dredging is essential to establish and maintain navigational channels for maritime commerce."

c. **Seasonal Restrictions.** Both the Department of Fish and Game and the U.S. Fish and Wildlife Service have referenced the Long Term Management Strategies' (LTMS) seasonal restrictions for maintenance dredging projects to protect important fisheries and related natural resources. The applicants have agreed to dredge during the prescribed environmental work window for the proposed project, from August 1st to October 15th of any year to protect the delta smelt, Chinook salmon, and steelhead. The applicants have also agreed to dredge via a clamshell bucket or mechanical dredge, to limit dredging to daylight hours, and to dredge no more than 2 dredging cycles every three-years in order to further minimize impacts to the above listed species and green sturgeon.

d. **Disposal in Accordance with Policy No. 3.** The Bay Plan Dredging Policy No. 3 states in part that "dredged material should, if feasible be reused or disposed outside the Bay and certain waterways." In addition, Policy No. 3 states, "..dredged material should not be disposed of in the Bay and certain waterways unless disposal outside these areas is infeasible and the Commission finds: (a) the volume to be disposed is consistent with the applicable dredger disposal allocation and disposal site limits adopted by the Commission by regulation; (b) disposal would be at a site designated by the Commission; (c) the quality of material disposed is consistent with the advice of the San Francisco Regional Water Quality Control Board and the interagency (DMMO) and (d) the period of disposal is consistent with the advice of the CDFG, USFWS and NOAA Fisheries.

   To reduce in-Bay disposal, as required by Dredge Policy No. 3, the applicants have proposed to limit in-Bay disposal at the Carquinez Strait dredge disposal site (SF-9) to 66% of the dredged material. The remaining approximately 33% of the dredged material (approximately 66,000 cy from dredging Episodes 1 and 2) would be placed upland at the Hamilton Wetlands Restoration Project, the San Francisco Ocean Disposal Site (SF-DODS), the Montezuma Wetland Project Site, or an upland location outside of the Commission's jurisdiction. The LTMS Program Managers have found this plan acceptable, and further state that after 2012, the out-of-bay disposal target is 80% of all dredged materials. The applicants will need to comply with the LTMS goals or provide analysis that clearly determines it is infeasible to do so after 2012.

e. **Water Quality.** On April 15, 2010, the California Regional Water Quality Control Board (RWQCB) issued a conditional Water Quality Certification (WQC), and found the proposed dredging activities consistent with the provisions of the Clean Water Act.

   The sediment proposed for dredging was tested and reviewed through the Dredged Material Management Office (DMMO), an inter-agency collaborative body that reviews dredging projects and dredged sediments proposed for aquatic disposal and beneficial reuse. Both the DMMO and the Regional Water Quality Control Board Staff concurred that the dredged material would be suitable for in-Bay disposal and placement at Hamilton.

The Commission should determine whether the project is consistent with its laws and policies regarding dredging and water quality.

B. **Review Boards**

1. **Engineering Criteria Review Board.** Because no Bay fill would be placed as a result of this project, the Commission's Engineering Criteria Review Board (ECRB) will not review the proposed project.

2. **Design Review Board.** The Commission's Design Review Board will not review the proposed project.

C. **Environmental Review.** The proposed project involves the reuse of Drydocks Two and Three and adjacent areas along the Mare Island Waterfront. The City of Vallejo adopted the Mitigated Negative Declaration on November 2, 2009, based on the requirements of the California Environmental Quality Act (CEQA).

D. **Relevant Portions of the McAteer-Petris Act**

1. Section 66602.1
2. Section 66605
3. Section 66632
4. Section 66663

E. **Relevant Portions of the San Francisco Bay Plan**

1. *San Francisco Bay Plan* Policies on Fish, Other Aquatic Organisms, and Wildlife
2. *San Francisco Bay Plan* Policies on Water-Related Industry
3. *San Francisco Bay Plan Policies* on Public Access
4. *San Francisco Bay Plan Policies* on Dredging
5. *San Francisco Bay Plan Policies* on Water Quality

Exhibits

A. **Project Location Map**

B. **Project Vicinity Map**

C. **Proposed Dredging Footprint**

D. **Proposed Public Access**